Section 232 Mortgage Insurance Programs

- Section 232 New Construction
- Section 232 Substantial Rehabilitation
- Section 232/223(f) Purchase/Refinance
- Section 232/223(a)(7) Refinance
- Section 232/241(a) Supplemental Loans
- Section 223(d) Operating Loss Loan
- Section 232(i) Fire Safety Equipment Loan
Key Questions to Determine Which Program Applies?

- General Questions:
  - Type of Facility?
  - New Construction or Sub Rehab?
  - Refinancing of Existing Indebtedness?
  - Extensive Repairs?
Key Questions (continued)

- Identifying the Parties:
  - Existing Entity or Newly Formed Entity?
  - Sole Asset Mortgagor?
  - For-Profit or Non-Profit?
  - Single Owner/Operator or Lessee Operator?
  - Management Company?
  - Administrative Services Agent?
  - Licensure?
  - Any Independent Units?
  - Shared services (e.g. dining facilities, kitchens, clinical space)?
Eligibility Questions

- Will the facility charge “founder’s fees,” “life care fees,” or other similar charges associated with “buy-in” facilities?
- Will the facility require more than four residents share a full bathroom (see 24 CFR 232.3)? (Not applicable for SNFs.)
- Are any residents required to access a qualifying bathroom by moving through a public corridor or area (see 24 CFR 232.3)? (Not applicable for SNFs.)
- Has the borrower, operator, or any of their affiliate’s renamed or reformulated companies, filed for or emerged from bankruptcy within the last five (5) years?
- Is the borrower, operator, or any of their affiliate’s renamed or reformulated companies, currently in bankruptcy?
- Is less than continuous protective oversight provided at the facility?
- Are there any “minimum assistance” requirements to qualify under Section 232 that the facility does not plan to offer?
- Are there floodways or coastal high hazard areas located onsite?
Independent Units

Program Guidance:

- HUD will allow up to 25% of the units in a Section 232 facility to be Independent Living (IL) units. However, please note the following:
  - The facility must offer services to all residents in the project comparable to those found in a skilled nursing facility, assisted living facility, board and care, or intermediate care facility.
  - A license is not required for the IL units; however, all of the other units in the facility must be licensed.
  - Waivers to exceed the 25% limit will be considered on a case-by-case basis for good cause. Please note that waivers have not been provided when the number of IL units exceeds 30% of the total project units.
Willow Gardens & Meadow Lane
A CASE STUDY

* Not actual project picture
Willow Gardens

- 41-Unit Memory Care Assisted Living Facility
- Located in New Rochelle, NY (Lower Westchester County)
- Constructed in 2015
- Original building was constructed in 1954
- Formerly 150-beds of Skilled Nursing
- Currently Licensed in NYS as a Special Needs Assisted Living Residence
- Occupies Bottom Two Floors of a Four Story Building
- Renovations Financed with Section 232 HUD-Insured Loan
- Condominium Ownership Structure
Meadow Lane

- 32-Unit Senior, Independent, Subsidized, Affordable Housing Project
- Section 202 Project
- Constructed in 2015
- Financed by HUD with Section 202 Capital Advance
- Formerly 150-beds of Skilled Nursing
- Occupies Top Two Floors of a Four Story Building
- Condominium Ownership Structure
United Hebrew Campus

- Densely Packed Campus
  - 296-Bed Skilled Nursing Facility
    - Financed with Section 232 HUD-Insured Mortgage
  - 126-Unit Assisted Living Facility
    - Financed with Section 232 HUD-Insured Mortgage
  - 135-Unit Senior, Subsidized, Affordable Housing Project
    - Former 202; Financed with Section 223(f) HUD-Insured Mortgage
  - 41-Unit Memory Care Assisted Living
    - Financed with Section 232 HUD-Insured Mortgage
  - 32-Unit Senior, Subsidized, Affordable Housing Project
    - Financed with Section 202 HUD Capital Advance
Key Questions to Determine Which Program Applied?

- Type of Facility?
  - Assisted Living and Independent Living
  - ORCF and/or Multifamily

- New Construction or Sub Rehab?
  - Section 232 or Section 231 or Section 221(d)4?

- One Project or Two Separate Projects?
  - Eligibility Questions?

- Licensure?
  - How Many Units?

- Independent Units
  - What Percentage?
Eligibility Questions

- Is less than continuous protective oversight provided at the facility?

- Are there any “minimum assistance” requirements to qualify under Section 232 that the facility does not plan to offer?
Independent Units

- Willow Gardens = 41 Units; Licensed by NYSDOH (56% of Overall Units)
- Meadow Lane = 32 Units; Independent, Unlicensed (44% of Overall Units)

Program Guidance:

- HUD will allow up to 25% of the units in a Section 232 facility to be Independent Living (IL) units.
  - The facility must offer services to all residents in the project comparable to those found in a skilled nursing facility, assisted living facility, board and care, or intermediate care facility.
  - A license is not required for the IL units; however, all of the other units in the facility must be licensed.
  - Waivers to exceed the 25% limit will be considered on a case-by-case basis for good cause. Please note that waivers have not been provided when the number of IL units exceeds 30% of the total project units.
Willow Gardens & Meadow Lane

Outcome

- Two Separate Projects
- Two Separate Ownership Entities
- Condominium Structure
Meadow Lane Documents

- Firm Commitment
- Capital Advance Agreement/Building Loan Agreement
- Organizational Documents and IRS Ruling on 501(c)(3)
- Note
- Mortgage
- Regulatory Agreement
- Use Agreement

- Title and Survey
- Construction Documents
  - Construction Contract
  - Owner-Architect Agreement
  - P/P Bonds
  - Davis Bacon Wage Determination
- Attorney’s Opinion
- Agreement to enter into PRAC
- Declaration of Condominium
Willow Gardens Documents

- Firm Commitment
- Organizational Documents and IRS Ruling on 501(c)(3)
- Note
- Mortgage
- Regulatory Agreement
  - Owner
  - Operator
- Title and Survey
- Certification on DACA

- Construction Documents
  - Building Loan Agreement
  - Construction Contract
  - Owner-Architect Agreement
  - P/P Bonds
  - Davis Bacon Wage Determination
- Attorney's Opinion
- HEAL Grant
- Declaration of Condominium
Challenges

Coordinating Projects
- Timing
- Scope

Condominium Structure
- Distinct Projects
- Declaration
- Allocation of cost
  - Construction
  - Common Elements
- Identity between condo owners now – what if that changes?
Addressing Concerns

Condominium Declaration
- Coming to agreement on allocation
- Rider to the Regulatory Agreement for both Meadow Lane and Willow Gardens
  - Signed by Condominium Entity

Title
- Legal Description
- Condominium Endorsement

Mortgage
- Condominium Covenants (Willow Gardens)
Takeaways and Best Practices

Planning

Communication

Organization